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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 ANGELES CHEMICAL COMPANY,
INC., a California corporation, et al.,

12 Plaintiff,

13 vs.

14 MCKESSON CORPORATION, a
15 California corporation, et al.,

16 Defendant.

Northern District Miscellaneous Matter
Case No. C 06-80343 Misc MMC (EDL)
Case No. C 07-80123 Misc MMC (EDL)

Case No. 01-10532 TJH (Ex)
Central District of California

**DECLARATION OF DIANE L. GIBSON IN
SUPPORT OF SSD'S OPPOSITION TO
PLAINTIFFS' MOTION TO COMPEL
SQUIRE, SANDERS & DEMPSEY'S
COMPLIANCE WITH MARCH 22, 2007
COURT ORDER**

17
18 Date: June 6, 2007
19 Time: 9:00 a.m.
Courtroom: Courtroom E, 15th Floor

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Declaration of Diane L. Gibson in Support of
SSD's Opposition to Order Shortening Time on
Motion to Compel

Northern Dist. Misc. Matter
Case No. C 06-80343 Misc MMC (EDL)
Case No. C 07-80123 Misc MMC (EDL)

1 I, Diane L. Gibson, declare as follows:

2 1. I am an attorney at law, admitted to practice before all courts in the State of
3 California. I am a partner in the law firm of Squire, Sanders & Dempsey L.L.P. (“SSD”), and
4 serve as counsel for non-party Rule 45 subpoena recipient SSD in this matter. The following
5 facts are true of my own knowledge, except as otherwise indicated.

6 2. On April 5, 2007, SSD provided its nonprivileged responsive documents to
7 McKesson for McKesson to review for privilege. A true and correct copy of a letter from me as
8 SSD’s counsel to Plaintiffs’ counsel dated April 5, 2007 is attached hereto as **Exhibit A**. Email
9 correspondence following the delivery of the draft log is attached as composite **Exhibit B**.

10 3. SSD provided to Plaintiffs’ counsel revised privilege logs on April 11 and 16,
11 2007. True and correct copies of these cover letters and privilege logs are attached hereto as
12 composite **Exhibit C**. SSD provided a final privilege log on April 19, 2007, the date that the log
13 was due pursuant to the Court’s standing order. A true and true and correct copy of the April 19,
14 2007 letter to Mr. Caufield transmitting the final privilege log and the log itself are attached
15 hereto as composite **Exhibit D**.

16 4. Plaintiff challenged SSD’s privilege objections on April 12, 2007. A true and
17 correct copy of Mr. Caufield’s April 12, 2007 letter is attached hereto as **Exhibit E**. On April 24,
18 2007, SSD sent a detailed meet and confer letter to Plaintiffs, describing the grounds for its
19 privilege objections. A true and correct copy of that letter is attached hereto as **Exhibit F**. That
20 letter was part of the omitted Exhibit R to Plaintiff’s motion to compel. *See* Notice of Errata, 07-
21 80123 Docket No. 11.

22 5. In the April 24, 2007 letter, SSD explained its objections, and then offered, as a
23 compromise to avoid the necessity of further court intervention, to create a new index listing the
24 documents on the key indexes, so that the underlying additional information sought by Plaintiff
25 could be provided without risking disclosure of information protected by the privileges that SSD
26 had asserted. *See* **Exhibit F**.

27 6. SSD offered to prepare a provide a list of documents received by Graham & James
28 (“G&J”) from McKesson as part of the negotiations, due diligence and or closing of the 1986

1 sales transaction that are listed or included in the documents that are items 5-11, 18-20 and 56 on
 2 SSD's April 19, 2007 privilege log. *See* **Exhibit F**.

3 7. Less than seven minutes later, Mr. Caufield sent an e-mail rejecting SSD's
 4 proposal. A true and correct copy of the e-mail response of Mr. Caufield is attached hereto as
 5 **Exhibit G**. This e-mail response of Mr. Caufield was also part of the omitted Exhibit R to
 6 Plaintiff's motion to compel. *See* 07-80123 Docket No. **11**.

7 8. A true and correct copy of the transcript prepared by SSD of the March 6, 2007
 8 hearing is attached hereto as **Exhibit H**.

9 9. SSD privilege log items 24, 26, 27, 28, 32, 38, 39, and 40 are multiple copies of a
 10 memorandum that appears originally to have had multiple attachments, consisting of listings of
 11 what appear to be McKesson documents or files. Each copy of the memorandum has attached a
 12 single page, appearing to consist of a portion of the original attachments. The original memo
 13 recites that it is attorney-client privileged, and is from Allan Bakalian. I am informed and believe
 14 that Mr. Bakalian was in-house counsel for Univar.

15 10. SSD privilege log items 44 and 47 are letters from Suzanne Henderson, then an
 16 associate with SSD, transmitting to Leslie Schenck, attorney for SSD's former client Univar,
 17 documents to be produced by SSD pursuant to the subpoena in this matter.

18 11. On information and belief, SSD privilege log items 21, 22, 23, 25 and 30 are the
 19 potentially responsive portions (*i.e.*, McKesson-sourced from before 1986) only of certain
 20 compilations of documents that appear to have been prepared either by or for Pakhoed entities, or
 21 their attorneys or agents, or some combination within the attorney-client privilege, including the
 22 joint defense and/or common interest doctrine of the attorney-client privilege, and/or attorney
 23 work product protection. Based on that context, SSD withheld the documents on the grounds of
 24 attorney-client privilege, and work product. (SSD stated in its privilege log that these
 25 compilations were prepared by or for Univar. Further review indicates that, although some of the
 26 documents may have been received from Univar, to the best of our knowledge at this time, the
 27 Pakhoed entities were the relevant client of G&J at the this time period.)
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1 12. SSD privilege log item 29 consists of the responsive (i.e. McKesson-sourced from
2 before 1986) portions only of a compilation of documents that appears to have been compiled
3 internally by G&J, as part of legal advice to its client, with later notations and possibly additions
4 by SSD. Based on that context, SSD withheld the documents.

5 13. SSD privilege log items 34 and 55 appear to be internal indexes prepared by G&J
6 or SSD of materials, including but not limited to files of documents that may have been received
7 by G&J from McKesson with respect to the 1986 transaction. Items 34 and 55 do not (with a few
8 exceptions) name particular documents; rather, they list titles of internal G&J files. These file
9 titles, which include descriptions of legal research, document compilation, or inquiry, may
10 disclose privileged matters.

11 14. SSD privilege log item 57 lists as privileged “all indexes of law firm files and
12 boxes.” SSD added this entry to the privilege log after counsel for subpoenaing Plaintiffs
13 asserted for the first time in meet and confer discussions with Suzanne Henderson and me on
14 April 19, 2007 that all indexes of G&J or SSD files or boxes were responsive to the subpoena.
15 During that conversation, we informed Plaintiffs’ counsel that the law firm file indexes would not
16 themselves be responsive to the subpoena, because such indexes do not list *documents*. Rather,
17 they list the law firms’ files and/or boxes. In addition, we stated that such file listings are
18 privileged, in that they often reflect attorney-client privileged information and or work product
19 information; *inter alia*, such indexes would disclose the subject matter of research and/or inquiry
20 or document compilations. My April 19, 2007 letter, discussed above as **Exhibit D**, confirmed
21 this position with Mr. Caufield.

22 15. SSD privilege log items 3 and 4 appear to be listings prepared by G&J of
23 documents that were received by G&J from McKesson during the 1986 transaction. Given their
24 placement in due diligence files along with other indexes that reflected attorney thought processes
25 and/or were shared with clients, SSD withheld them on grounds of privilege.

26 16. SSD Privilege Log 59 consists of all items listed on McKesson’s logs of
27 documents that it withheld on grounds of privilege after SSD provided the documents to
28 McKesson to pre-screen for privilege as contemplated by the Court’s March 22, 2007 Order.

1 Based on the discussion at oral argument and the Court's Order as to McKesson's Motion for
 2 Protective Order (06-80343 Docket No. 49), it is SSD's understanding that it is the Court's
 3 intention that McKesson and Plaintiffs, parties to the underlying action, should resolve, together
 4 or with the assistance of the Central District Court, any disputes regarding the privileged nature of
 5 such documents, after McKesson has raised the privilege.

6 17. Attached hereto as **Exh. I** is a copy of the Central District Court's Order Denying
 7 "Plaintiffs' Motion to Compel Production of Documents Transmitted By McKesson to Third
 8 Parties Pakhoed & Univar Corp."

9 18. Privilege Log Item 51 originally included a few pages [SSD 015714, 015782-83,
 10 015933-34] that we have since determined were not received from McKesson as part of the 1986
 11 transaction.

12 19. Privilege Log Item 12 included two documents that, upon review, were determined
 13 to have been inadvertently withheld. These are pages 013804-06 and 013820-22.

14 20. Privilege Log Item 58 appears to be a draft of a transaction-related document that
 15 may have been received in whole or in part from McKesson, but may have been prepared by
 16 G&J. As noted on the privilege log, investigation of the privileged status of the document is
 17 continuing.

18 21. Plaintiffs did not list Privilege Log Items 1, 13, 23, 31, 35, 49, and 50 in their meet
 19 and confer letter, did not mention them in their motion, and did not mention them in their Exhibit
 20 U. Thus, SSD understands that those documents are not sought by the motion. In any event, as
 21 disclosed on the log, on information and belief: Item 1 what appears to be a McKesson prepared
 22 document with intertwined G&J notations; Item 13 is a draft of an SSD invoice to Univar
 23 reflecting transmittal of documents; Item 23 is discussed in ¶11, above; Item 31 is a collection of
 24 questionnaires that may have been prepared for purposes of legal advice regarding potential
 25 disputes or litigation analysis; investigation is continuing as to the source and author of these
 26 documents; Item 35 is an internal G&J memorandum to Robert Thompson, then a partner at G&J,
 27 from Jennifer Hernandez, then a G&J attorney, regarding boxes that may include McKesson-
 28 sourced documents; Item 49 is handwritten notes of Suzanne Henderson, then with SSD, of a

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1 telephone call with Leslie Schenck, attorney for SSD former client Univar; Item 50 is a
2 memorandum to file regarding a telephone message from Ms. Schenck.

3 I declare under the penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this 22nd day of May 2007 at San Francisco, California.

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6 /s/Diane L. Gibson
7 Diane L. Gibson
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